

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

**NORMAN TODD,**

Plaintiff,

vs.

CASE NUMBER 2:07-CV-149-MEF

**CITY OF CLANTON, ALABAMA,** a )

municipal corporation; by and through )

its **MAYOR, HONORABLE BILLY** )

**JOE DRIVER,** in his official capacity as )

Mayor and individually; **POLICE** )

**CHIEF JAMES HENDERSON,** )

in his official capacity, as well as )

individually; **CORPORAL GREG** )

**CHARLES,** in his official capacity )

and individually; and **CHRISTINE** )

**LITTLEJOHN,** an individual, )

Defendants. )

JURY TRIAL DEMANDED

**MOTION TO DISMISS**

The City of Clanton, Alabama, a municipal corporation, Mayor Billy Joe Driver, Police Chief James Henderson and Police Officer Greg Charles file this their Motion to Dismiss and say:

1. The complaint fails to state a claim upon which relief can be granted.
2. The plaintiff has failed to strictly comply with § 11-47-23 and § 11-47-192, Code of Alabama, 1975, as amended ("Code").
3. The complaint fails to state a claim upon which relief can be granted

pursuant to § 11-47-190, Code.

4. The complaint fails to state a claim upon which relief can be granted pursuant to 42 U.S.C. § 1983.
5. The complaint fails to state a claim upon which relief can be granted pursuant to the doctrine of Respondeat Superior.
6. The complaint fails to state a claim upon which relief can be granted in the form of punitive damages.
7. The complaint is barred by the pertinent statute of limitations and/or the doctrine of laches.
8. The plaintiff has failed to join necessary and indispensable parties to this action.
9. The Defendants contest the form and sufficiency of process and of service of process.
10. The plaintiff lacks standing to bring this cause of action.
11. Defendants plead all available doctrines of immunity and privilege.
12. The complaint fails to state a claim for an alleged violation of the plaintiff's first, fourth, and fifth amendment rights pursuant to 42 USC § 1983 (Count One) upon which relief can be granted.
13. The complaint fails to state a claim for an alleged violation of the

plaintiff's first, fourth, fifth and fourteenth amendment rights pursuant to 42 USC § 1983, (Count Two) upon which relief can be granted.

14. The complaint fails to state a claim for an alleged violation of Plaintiff's Fourth and Fifth Amendment Rights as re-adopted by the State (Count Three) upon which relief can be granted.
15. The complaint fails to state a claim for an alleged violation of Plaintiff's Federal Constitutional Rights for negligent hiring, training and supervision pursuant to 42 USC § 1983 (Count Four) upon which relief can be granted.
16. The complaint fails to state a claim for an alleged violation of Plaintiff's First, Fourth, Fifth and Fourteenth Amendment Rights to be free from malicious prosecution pursuant to 42 USC § 1983 (Count Five) upon which relief can be granted.
17. The complaint fails to state a claim for an alleged violation of Plaintiff's First, Fourth, Fifth and Fourteenth Amendment Rights to be free from malicious prosecution pursuant to 42 USC § 1983 (Count Six) upon which relief can be granted.
18. The complaint fails to state a claim for an alleged violation of Trespass (Count Seven) upon which relief can be granted.
19. The Defendants are immune from punitive damages in this action.
20. The Defendants plead Section 6-11-26 of the Code of Alabama

(1975).

21. The plaintiff has failed to mitigate his damages.
22. The Defendants plead all forms and doctrines of waiver and estoppel.
23. The Defendants plead all defenses, immunities and indemnities as provided by § 11-47-190, et seq.
24. The Defendants reserve their right to amend this Motion to Dismiss during the discovery process.

### **ORAL ARGUMENT REQUESTED**

/s/ James W. Porter, II

James W. Porter II, one of the attorneys for Defendants, The City of Clanton, Mayor Billy Joe Driver, Police Chief James Henderson, and Officer Greg Charles.

State Bar ID ASB 3314 T79J

State Code POR001

/s/ Natalie A. Daugherty

Natalie A. Daugherty, one of the attorneys for Defendants, The City of Clanton, Mayor Billy Joe Driver, Police Chief James Henderson, and Officer Greg Charles.

State Bar ID ASB 6494 A55D

State Code DAU007

#### OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been *electronically filed* with the Clerk of the Court using the CM/ECF system which will send notification of such filing upon the following, this the **21<sup>st</sup> Day of February, 2007**. If Notice of Electronic Filing indicates that Notice should be delivered by other means to any of the following, I certify that a copy will be sent via U.S. Mail, properly addressed, postage prepaid.

Donald G. Madison, Esq.  
418 Scott Street  
Montgomery, AL 36104

/s/ James W. Porter II

OF COUNSEL